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IN THE

Supreme Court of the United States

BANK MARKAZI, AKA THE CENTRAL BANK OF IRAN,

Petitioner,

v.

DEBORAH PETERSON, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE UNITED STATES SENATE AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

PATRICIA MACK BRYAN
Counsel of Record
Senate Legal Counsel
MORGAN J. FRANKEL
Deputy Senate Legal Counsel
GRANT R. VINIK
THOMAS E. CABALLERO
Assistant Senate Legal Counsel
OFFICE OF SENATE LEGAL COUNSEL
642 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-4435
pat_bryan@legal.senate.gov
Counsel for United States Senate

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BRIEF FOR THE UNITED STATES SENATE AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

INTEREST OF AMICUS

This case presents the question whether a statute concerning the attachability of certain assets of the Central Bank of Iran in a pending federal case seeking to recover on judgments secured by victims of state-sponsored terrorism transgresses the separation of powers doctrine by infringing on the Article III judicial power. Section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158,

126 Stat. 1214, 1258 (codified at 22 U.S.C. § 8772 (2012)) [hereinafter "section 8772"], provides that the assets at issue in this case are subject to execution or attachment to satisfy judgments against Iran for damages from injury or death caused by acts of terrorism or the provision of material support or resources for such acts. Petitioner Bank Markazi, aka the Central Bank of Iran, argues that Congress encroached on the Judicial Branch's power under Article III in enacting section 8772.

The Senate has a strong interest in defending the constitutionality of section 8772 and, more broadly, its authority to legislate with particularity, including in ongoing cases, as circumstances require. The Senate appears as amicus curiae to present its views that section 8772 is a constitutional exercise of Congress' legislative power that does not intrude upon the judicial power established under Article III of the Constitution.[1]

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[1] This appearance is undertaken pursuant to S. Res. 333, 114th Cong. (2015), 161 Cong. Rec. S8610 (daily ed. Dec. 10, 2015), directing the Senate Legal Counsel to appear in the name of the Senate as amicus curiae under 2 U.S.C. § 288e(a), which authorizes the Senate to appear "in any court of the United States in which the powers and responsibilities of Congress under the Constitution of the United States are placed in issue." Permission to appear as amicus is "of right" and may be denied only for untimeliness. 2 U.S.C. § 288*l*(a). This brief is submitted in accordance with Supreme Court Rule 37.4, which provides that "[n]o motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative."

STATEMENT

This case arises from international terrorist acts committed by Iran against Americans, and legislation enacted by Congress to allow Americans to seek compensation for their injuries through suits against foreign governments responsible for terrorist acts. Almost twenty years ago, Congress took the first step to hold foreign governments accountable to Americans who have suffered injuries or death from terrorist acts those governments committed, sponsored, or supported. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 232, 110 Stat. 1214, 1243 (providing exception to foreign sovereign immunity for suits against designated state-sponsors of terrorism for injuries or death from acts of terrorism). The supporters of the 1996 law recognized the importance of allowing American victims of such heinous acts to seek justice for the terrible damage they have suffered. *See* 142 Cong. Rec. 7801 (1996) (statement of Sen. Robert Dole) ("This [legislation] is historic and will, at long last, allow American victims of terrorism to use U.S. courts to try to seek compensation for the vicious acts of terrorist states."); *id.* at 7790 (statement of Sen. Hank Brown) ("Sovereign immunity is an act of trust among nations of good faith. When a terrorist state harbors or supports known terrorists, or injures or kills American citizens, it destroys that trust and should not be allowed to avoid the accusations of those it harms.").

Because of the difficulty in executing judgments against foreign governments, allowing victims of terrorism to sue and be granted relief by the courts was not sufficient. Accordingly, in order to facilitate the ability of these victims to obtain their court-ordered compensation, Congress enacted various laws

to enable execution of those judgments against the blocked assets of terrorist parties found liable for the harm. *See, e.g.*, Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337 (2002) (authorizing execution of judgments against blocked assets of terrorist parties and their agencies and instrumentalities); National Defense Authorization Act for FY 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338-41 (2008) (authorizing attachment of assets of agency or instrumentality of foreign government for judgments in terrorism cases even where agency or instrumentality is separate legal entity).

The plaintiffs in this case are over a thousand victims of terrorist attacks sponsored by Iran and the representatives and surviving family members of those victims, *see* Bank Markazi's Petition for Writ of Certiorari at 52a-53a (Opinion and Order of district court in *Peterson v. Islamic Republic of Iran*, No. 10-civ-4518 (S.D.N.Y. Feb. 28, 2013)), including victims of the bombings of the Marine barracks in Lebanon in 1983 and Khobar Towers in Saudi Arabia in 1996. *See* 158 Cong. Rec. S3321 (daily ed. May 21, 2012) (statement of Sen. Menendez). These victims have joined together in this action to seek payment on billions of dollars of judgments that they have secured against Iran – in over 18 cases – from assets held in the United States for the benefit of Bank Markazi, the Central Bank of Iran.

After this action was filed, Congress passed the law challenged here, the Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, § 502, 126 Stat. 1214, 1258, which amended existing law under the Foreign Sovereign Immunities Act to remove the protection of sovereign immunity from the assets at issue here and to make clear that such assets

are available for attachment even if held by a financial intermediary. As the sponsor of this provision explained, Congress should deny to Iran and Iranian government instrumentalities the benefits of sovereign immunity as "Iran . . should not be able to avoid having its assets attached and pursued and executed upon as they killed Americans and hav[e] been part of killing Americans abroad." 158 Cong. Rec. S3321 (daily ed. May 21, 2012) (statement of Sen. Menendez). Bank Markazi now challenges this law as violating Article III of the Constitution.

SUMMARY OF ARGUMENT

Article I of the Constitution, as reflected in this Court's decisions and longstanding practice, gives Congress the power to enact legislation with narrow application, legislation that changes the law in a particular case, and legislation that imposes duties or creates rights that are clearly articulated and directly applicable to particular claims. None of those exercises of legislative power, either alone or together, transgresses the Judiciary's Article III power to rule on cases or controversies properly before it.

I. In defining the limitations imposed by Article III on the legislative power, this Court has held that Congress may not direct courts how to decide a particular case pending before them, *United States v. Klein*, 80 U.S. (13 Wall.) 128, 146 (1872), as such action intrudes on the judicial power reserved to that Branch. However, this Court has made clear that Congress may "amend applicable law" affecting a specific pending case – even conclusively – without violating Article III. *See Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 441 (1992); *see also Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995) (explaining that "[*Klein's*] prohibition does not take

hold when Congress amends applicable law") (internal quotation marks and citation omitted). In enacting section 8772, Congress did precisely that – it amended the law governing whether particular assets are attachable to satisfy the judgments held by victims of terrorism, establishing a new legal standard for attachment and execution of terrorism judgments against the assets in this case. Section 8772 neither dictates to the courts how to rule on plaintiffs' request to execute their judgments against these assets, nor directs the courts how to make determinations under the new standard for attaching these assets set out in that law.

The substance of Bank Markazi's challenge to section 8772 was previously rejected by the Court in *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429. In that case, the Court upheld the constitutionality of a statute that had changed the application of environmental laws in three related pending cases about timber harvesting in forests in Oregon and Washington during one fiscal year. The Court found that the statute in that case did not violate Article III because it "compelled changes in law, not findings or results under old law," and did not "direct any particular findings of fact or applications of law, old or new, to fact." *Id.* at 438. Like the statute in *Robertson*, section 8772 modifies existing law applicable to a pending case with a narrow application to the specific assets involved in this proceeding. As in *Robertson*, the statute here does not direct the courts how to rule on the claims before them, but rather amends the law governing attachment of the assets at issue. This Court should apply *Robertson* to the analogous law at issue here and uphold section 8772 as a proper exercise of legislative power that does not intrude on Article III.

II. Section 8772's focus on a single pending case does not violate Article III. Bank Markazi's argument that section 8772's narrow application "defies the Nation's history and traditions," Brief for Petitioner [hereinafter "Petitioner's Br."] at 29, is refuted by longstanding legislative practice. From the First Congress onward, Congress has enacted numerous laws with very specific applications to subjects as narrow as a single person or circumstance, *see infra* notes 9-13, including changing the law applicable to a single legal action, such as by extending statutes of limitations for one claim. *See infra* note 12. Such an extensive history of congressional legislation on specific individual claims belies any argument that a law is constitutionally suspect if it has a narrow scope or application.

While the Constitution assuredly contains provisions restricting Congress' power to enact certain types of particular legislation, *see, e.g.*, U.S. Const. art. I, § 9, cl. 3 (prohibiting Bills of Attainder); U.S. Const. amend. V (equal protection component of Due Process Clause), those provisions are not at issue here, and there is no support, in either the text of the Constitution or this Court's precedents, for imposing on Congress a principle of legislative generality under Article III or prohibiting legislation merely because it affects a single case. "Even laws that impose a duty or liability upon a single individual or firm are not on that account invalid." *Plaut*, 514 U.S. at 239 n.9.

III. Bank Markazi's argument that, even if not facially directing a judicial ruling, section 8772 violates Article III because it "effectively dictate[s] the outcome of this case," Petitioner's Br. at 45, is meritless. Notwithstanding Bank Markazi's contention that the findings required by section 8772 for the

courts to order attachment of the assets are "foregone conclusions," *id.* at 47, the application of section 8772 in this case remains the responsibility of the Judiciary, as that section requires the courts' traditional exercise of independent judicial power to execute. That the required findings in section 8772 may be straightforward does not diminish the role the courts play in ordering any attachment or execution thereunder.

Under *Klein*, 80 U.S. 128, a law is unconstitutional if its provisions, *by their own terms*, direct the Judiciary how to rule in a particular case. Neither *Klein* nor any subsequent decision of this Court has held that a statute is unconstitutional if it changes applicable law so as *effectively* to compel a particular outcome in a pending case. Bank Markazi's argument that the effect of a statute on a specific pending case renders it unconstitutional cannot be squared with this Court's decisions in *Pennsylvania v. Wheeling and Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856) and *Robertson*, both of which upheld laws that effectively determined the outcome in specific pending cases.

ARGUMENT

I. SECTION 8772 DOES NOT INTRUDE ON THE JUDICIAL FUNCTION BECAUSE IT DOES NOT INSTRUCT THE COURT HOW TO RULE, BUT RATHER CHANGES THE LAW APPLICABLE TO THE CLAIMS BEFORE THE COURT.

Article III places two constraints on Congress' power to enact laws that affect specific cases: (1) Congress may not require the Judiciary to re-open final judgments of the Judicial Branch, *Plaut*, 514 U.S. at 240, and (2) Congress may not direct the courts how to rule in pending cases. *Klein*, 80 U.S. at 146. Such laws

violate Article III not because they are narrow in scope or affect ongoing cases, but because through such laws Congress seeks to participate in the exercise of the judicial power to decide cases or controversies. This Court has clarified that Congress may "amend applicable law" affecting a pending case, *Robertson v. Seattle Audubon Soc'y*, 503 U.S. at 441, without running afoul of *Klein*'s prohibition on directing how a court must rule in a particular case or *Plaut*'s restriction on directing the re-opening of final judgments. *Plaut*, 514 U.S. at 218 (explaining that "[*Klein*'s] prohibition does not take hold when Congress amends applicable law") (internal quotation marks and citation omitted).

In enacting section 8772, Congress did precisely that – it amended the law governing whether the assets at issue are attachable to satisfy the judgments held by victims of terrorism, establishing a new legal standard for attachment and execution of terrorism judgments against the assets in this case. Section 8772 neither dictates to the courts how to rule on plaintiffs' request to execute their judgments against these assets, nor does it direct the courts how to make the determinations under the new standard for attachment set out in section 8772. Accordingly, section 8772 does not violate Article III.

A. *Klein* remains the only case in which this Court has found that a law enacted by Congress infringed on the Judicial Branch by requiring courts to decide a case in a specific manner. In that case, the administrator of the estate of a former resident of the Confederacy brought an action seeking to recover the value of property seized by Treasury officials during the Civil War. Under applicable law, a person who had property seized by the United States Government during the war could seek to recover the value of the

property so long as the claimant could demonstrate that the claimant had never given aid or comfort to the rebellion. *Klein*, 80 U.S. at 139. Prior to *Klein*, this Court had held that, in evaluating whether a claimant met the standard for recovery, the claimant's receipt of a Presidential pardon conditioned on pledging an oath of allegiance to the United States served as proof of loyalty entitling the claimant to recover the value of the confiscated property. *United States v. Padelford*, 76 U.S. (9 Wall.) 531, 542-43 (1870). Congress responded to the *Padelford* decision by enacting legislation directing that no pardon could be offered as evidence or used to establish the claim of a person to recover confiscated property, except that any recitation in the pardon that the person had taken part in the rebellion must be considered conclusive evidence that the person did not maintain true allegiance to the United States, in which case the court would be divested of jurisdiction and required to dismiss the suit. *Klein*, 80 U.S. at 133-34.

The Court found that such a direction to the Judicial Branch to dismiss actions before the courts "inadvertently passed the limit which separates the legislative from the judicial power." *Id.* at 147 [2] In explaining where this "separation" falls, the Court distinguished that law from the statute it had upheld earlier in *Pennsylvania v. Wheeling and Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856). *Wheeling Bridge* involved a decree of this Court finding a bridge over the Ohio River to constitute an obstruction to navigation and requiring the bridge be removed or elevated. After the bridge was damaged in a storm

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[2] The Court also held the statute invalid on the unrelated ground that it "infring[ed] the constitutional power of the Executive" by "impairing the effect of a pardon." *Klein*, 80 U.S. at 147.

and rebuilt, Pennsylvania, which had secured the injunction, moved to have the injunction enforced and the bridge removed. *Id.* at 424-28. In the interim, Congress had passed a law declaring the bridge a "lawful structure" and denominating it a post-road for the passage of U.S. mail, thereby making it, as a matter of law, no longer an obstruction to navigation subject to removal. *Id.* at 429; *Klein*, 80 U.S. at 146. Following the new law, the Court refused to enforce the judgment and dissolved the injunction, as the bridge was no longer an obstruction subject to removal because of the intervening law. *Wheeling Bridge*, 59 U.S. at 432, 435-36. The Court held that the law changing the bridge's legal status was a constitutional exercise of Congress' power, even though it effectively compelled a specific outcome in a single pending case. *Id.* at 431-32; *Klein*, 80 U.S. at 147.

Unlike in *Wheeling Bridge*, the statute in *Klein* did not simply amend the law applicable to the claims before the courts, but directed specific judicial rulings. The statute in *Klein* mandated that in any case where the Claims Court had rendered a judgment for a claimant based on a pardon issued to the claimant, the Supreme Court on appeal "shall dismiss the same for want of jurisdiction." 80 U.S. at 134. In addition, the statute required courts to "forthwith dismiss the suit" of any claimant who had received a pardon that had "issued without an express disclaimer of, and protestation against," the recitation in the pardon that the person took part in the rebellion or was disloyal to the United States. *Id.* Unlike in *Wheeling Bridge*, where Congress changed the law governing the matter, but left to the courts its application in the case, Congress' law regarding the effect of pardons specifically dictated to the courts how to rule on cases before them.

Post-*Klein*, the Court has recognized this distinction between congressional enactments directing judicial rulings on the one hand, which intrude on Article III, and those amending the law applicable to pending cases, as in *Wheeling Bridge*, which do not. *See Plaut*, 514 U.S. at 218 ("Whatever the precise scope of *Klein* . later decisions make clear that its prohibition does not take hold when Congress 'amend[s] applicable law.'") (quoting *Robertson*, 503 U.S. at 441).

B. Because the provision challenged here, 22 U.S.C. § 8772, amends the law applicable to this case and does not direct courts to rule a certain way, it does not infringe on the judicial power in Article III. The law at issue in this action involves the immunity of foreign sovereigns and their property before the courts of the United States. To effectuate United States policy in this area, Congress has enacted laws governing the immunity of foreign sovereigns. *See* Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611. As part of this legal framework, Congress has mandated various exceptions to foreign sovereign immunity, *see, e.g.*, 28 U.S.C. § 1605A (terrorism exception to the jurisdictional immunity of a foreign state); 28 U.S.C. § 1610 (exception to immunity of property of a foreign state from attachment or execution), and has adjusted and modified those exceptions as it has deemed appropriate. *See* Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337-40 (2002) (regarding satisfaction of judgments from blocked assets of terrorists, terrorist organizations, and state sponsors of terrorism).

Section 8772 further modifies the law governing the immunity of assets of foreign sovereigns and their

instrumentalities.[3] Subsection (a)(1) provides that particular assets meeting three criteria "shall be subject to execution or attachment in aid of execution" to satisfy judgments against Iran for personal injury or death caused by certain terrorist activities or the support of such actions.[4] Subsection (a)(2) provides the standard for when those assets may be attached, that is, what conditions must be established before the courts may order attachment and execution against the assets identified in subsection (a)(1). Specifically, the statute requires that, prior to attaching or executing against these assets, the court must

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[3] Bank Markazi mischaracterizes this case as involving "tort claims between parties seeking billions of dollars of money damages." Petitioner's Br. at 39. Plaintiffs are not asking the court to find Bank Markazi liable for injuries they suffered from acts of terrorism or to "award" them damages. *Id.* at 25 (quoting *Lindh v. Murphy*, 96 F.3d 856, 872 (7th Cir. 1996) (en banc), *rev'd on other grounds*, 521 U.S. 320 (1997)). These victims of terrorism and their families *already* have been awarded judgments for injuries they suffered from terrorist acts sponsored or supported by Iran. In this action, plaintiffs seek only to execute those judgments by attaching property held on behalf of the Central Bank of Iran, pursuant to Congress' determination in law as to whether such property is afforded immunity or is subject to attachment.

[4] The three criteria are that the asset is

> (A) held in the United States for a foreign securities intermediary doing business in the United States; (B) a blocked asset (whether or not subsequently unblocked) that is property described in subsection (b); and (C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad.

22 U.S.C. § 8772(a)(1).

determine that "Iran holds equitable title to, or the beneficial interest in, the assets" and that "no other person possesses a constitutionally protected interest in the assets."

The remaining parts of section 8772 clarify or support the application of the attachment and execution provision of subsection (a). Subsection (b) identifies with particularity the assets that are covered by subsection (a)(1), namely "the financial assets that are identified in and the subject of proceedings" in this case, and subsection (c) clarifies that this provision should not be construed to change the applicable law governing the right to satisfy judgments in other cases, nor to apply to assets other than those specifically identified in subsection (b).[5]

By its terms, section 8772 does not dictate to the courts how to rule in this case. Rather, it changes the applicable law that the courts must apply in determining whether the assets at issue are subject to attachment in execution of the plaintiffs' judgments, just as the statute in *Wheeling Bridge* altered the applicable law governing the legal status of the particular bridge at issue there and whether it was subject to removal. As such, section 8772 does not violate the prohibition in *Klein* on directing a particular ruling in a case.

The Court's decision in *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, rejecting a constitutional challenge under Article III to a narrowly tailored law that affected three specifically identified pending

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[5] The final two subsections of section 8772 define terms used in the section (subsection (d)) and provide technical amendments to the Foreign Sovereign Immunities Act (subsection (e)).

cases, is closely analogous and supports the constitutionality of section 8772. *Robertson* presented a challenge to timber harvesting in forests in Oregon and Washington managed by the federal government. *Id.* at 432. Those forests contained habitat of the northern spotted owl, which was listed as threatened under the Endangered Species Act. Environmental advocacy groups had sued to enjoin proposed timber sales for violating five statutes,[6] and a court had enjoined some of the proposed timber harvests and sales. *Robertson*, 503 U.S. at 432.[7] Congress responded to the ongoing litigation and the injunction by enacting section 318 of the Department of the Interior and Related Agencies Appropriations Act, 1990, Pub. L. No. 101-121, 103 Stat. 701, 745 (1989), to govern the harvesting of timber in these areas for Fiscal Year 1990. *Robertson*, 503 U.S. at 433-34.

Section 318 enacted a compromise allowing some timber harvesting, while at the same time expanding restrictions on harvesting in certain areas. *Id.* at 433. Section 318 provided for harvesting a set amount of timber in Fiscal Year 1990 and established environmental criteria for the government to follow in selecting sites for harvesting. The new law also prohibited harvesting from designated areas, establishing areas of protected spotted owl habitat during that fiscal year. 103 Stat. 745-47; 503 U.S. at 433. As the allowable amount of timber harvesting

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[6] The Migratory Bird Treaty Act, the National Environmental Policy Act of 1969, the National Forest Management Act of 1976, the Federal Land Policy and Management Act of 1975, and the Oregon California Railroad Land Grant Act.

[7] In addition to the two suits by environmental groups, a logging association filed a third suit challenging restrictions on timber harvesting in these forests.

under the statute necessitated harvesting from areas that were subject to the injunction, section 318 further provided that compliance with the management of the areas as set forth in that section would constitute

> adequate consideration for the purpose of meeting the statutory requirements that are the basis of the consolidated cases captioned Seattle Audubon Society et al., v. F. Dale Robertson, Civil No. 89-160 and Washington Contract Loggers Assoc. et al., v. F. Dale Robertson, Civil No. 89-99 (order granting preliminary injunction) and the case Portland Audubon Society et al. v. Manuel Lujan, Jr., Civil. No. 87-1160-FR.

103 Stat. 747.

The environmental advocacy groups challenged section 318 as a violation of Article III, because, they claimed, it directed the outcome in pending suits, transgressing the rule established by *Klein*. *Robertson*, 503 U.S. at 436-37 This Court rejected that challenge, holding that section 318 did not encroach on Article III because that section "replaced the legal standards underlying" the pending suits, "without directing particular applications under either the older or the new standards." *Id.* at 437 As the new statute "compelled changes in law, not findings or results under old law," and did not "direct any particular findings of fact or applications of law, old or new, to fact," *id.* at 438, the Court upheld the law under Article III.

As in *Robertson*, section 8772 modifies existing law applicable to a pending case. In *Robertson*, the statute amended the application of five environmental statutes to the claims in three pending related suits;

here, section 8772 amends the law governing the immunity of the property of a foreign sovereign in this case. Like the law upheld in *Robertson*, section 8772 does not compel "particular findings of fact or applications of law . . . to fact," 503 U.S. at 438, nor does it "expressly provide[] for judicial determination," *id.* at 438-39, to attach these assets for execution of plaintiffs' judgments. Rather, it "compel[s] changes in law," *id.* at 438, and "replace[s] the legal standards underlying" this suit, *id.* at 437, leaving to the courts the application of those new standards. Accordingly, *Robertson*'s holding applies equally here, and this Court should likewise find that section 8772 does not intrude on the judicial power reserved by Article III.

II. SECTION 8772'S EFFECT ON A SINGLE PENDING CASE DOES NOT VIOLATE ARTICLE III.

While section 8772 is narrow in its application, that fact does not render it unconstitutional. Bank Markazi argues that section 8772's application to narrow circumstances – the particular assets at issue here – violates Article III because it changes the law for a single pending case, Petitioner's Br. at 25, thus usurping the judicial function. This Court has never invalidated a statute under Article III because it affects only a single pending case. Indeed, in *Robertson*, the Court found no constitutional problem with a statute that was limited in effect to a single fiscal year and altered the law applicable to three pending related cases. The Court has termed "[t]he premise that there is something wrong with particularized legislative action questionable," noting that "[e]ven laws that impose a duty or liability upon a single individual or firm are not on that account invalid" as infringing on Article III. *Plaut*,

514 U.S. at 239 n.9; *cf. Paramino Lumber Co. v. Marshall*, 309 U.S. 370, 380 (1940) ("[The Constitution] contains no provision against private acts enacted by the Federal government except for a prohibition of bills of attainder and grants of nobility.").[8]

Bank Markazi nevertheless argues that the narrow scope of section 8772 "defies the Nation's history and traditions," Petitioner's Br. at 29, in particular, as asserted by their amici, the "principle of legislative generality." Br. of Amici Federal Courts Scholars at 25. Consistent practice from the First Congress onward refutes the claim of a constitutional tradition or principle of legislative "generality." From the earliest days under the Constitution, Congress has passed bills with applications to subjects as narrow as a single person or circumstance.[9] These "private bills"

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[8] In *Paramino Lumber* the Court upheld legislation affecting the claim of a single individual. In that case, the Paramino Lumber Company and its insurer paid compensation to an employee longshoreman who had been injured while working. The employee then applied under the Employees' Compensation Act to the Compensation Commission, which determined that he had been wholly disabled for a period until he recovered and that he had been paid all compensation due. 309 U.S. at 374-75. Subsequently, the employee was diagnosed with further injury, necessitating additional medical treatment. *Id.* at 376. Almost five years after the original determination, Congress passed a law directing the Compensation Commission to review the previous determination and issue a new compensation order. *Id.* at 375 n.3. The Court upheld the law against a challenge by the company and its insurer that the statute violated due process and was a usurpation of the judicial function. *Id.* at 378-81.

[9] One researcher has calculated that "private legislation accounted for 24% of the laws enacted by Congress" from 1789 to 1813 and "over 35% of all legislation enacted in 74 of the 79 Congresses between 1814 and 1971." Charles E. Schamel,

have adjusted legal relations of specifically named individuals far beyond simply paying or indemnifying against claims, as asserted by Bank Markazi (Petitioner's Br. at 40-41).[10] Moreover, this legislative practice has continued up to the present day.[11]

Untapped Resources: Private Claims and Private Legislation in the Records of the U.S. Congress, PROLOGUE, Vol. 27, No. 1 (1995), *available at* https://www.archives.gov/publications/prologue/1995/spring/private-claims-1.html. The designation of laws as "private" or "public" is not of constitutional significance to either the Article I power of Congress or the Article III jurisdiction of the Judiciary. It is the same legislative power at issue, regardless of its categorization, and is subject to the same constitutional constraints.

Indeed, laws were not initially classified as "public" or "private" when enacted. When the first several volumes of Statutes at Large were published in 1845, private legislation was collected in a separate Volume 6. Before then, the index of federal laws compiled by the Clerk of the House contained all acts of Congress, including laws "of a private or local nature," *General Index to the Laws of the United States of America From March 4, 1789 to March 3, 1827* (Samuel Burch, ed. 1828), which had been published sequentially, by date of enactment. *See Laws of the United States of America*, vols. I-X (compiled by John B. Colvin & Benjamin B. French) (Bioren and Duane ed., 1815-1845).

[10] *See, e.g.*, Act of Aug. 4, 1790, ch. 37, 6 Stat. 3 (remitting duties paid by two named individuals on imported goods destroyed by flood); Act of April 25, 1808, ch. 63, 2 Stat. 498 (providing for suits in law or equity to establish claims against bills drawn in favor of four named persons to be commenced by a date certain); Act of May 1, 1822, ch. 44, 6 Stat. 267 (restoring rights and privileges to one identified ship, notwithstanding navigation law); Act of May 7. 1822, ch. 66, 6 Stat. 268 (releasing individual sureties of a named taxpayer from all demands and executions or process or taxes under any law passed after date certain); Act of Feb. 5, 1825, ch. 8, 6 Stat. 320 (authorizing issuing letter patent to one named individual).

[11] *See, e.g.*, Priv. L. No. 95-161, 92 Stat. 3858 (1978) (directing Attorney General to cancel warrants of deportation and arrest of

Indeed, Congress has provided for changes in law applicable to a single legal claim or action, including extending statutes of limitations and establishing jurisdiction in a particular federal court for an individual's claim[12] and discharging persons from imprisonment on debts owed to the government,[13] all

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named alien and granting relief from deportation); Priv. L. No. 98-34, 98 Stat. 3430 (1984) (providing for extension of single identified patent); Priv. L. No. 98-48, 98 Stat. 3435 (1984) (relieving liability of religious organization for sale of hospital to for-profit corporation); Priv. L. No. 105-3, 111 Stat. 2698 (1997) (deeming named person naturalized citizen of United States as of Aug. 8, 1942 for purposes of eligibility under international agreement); Priv. L. No. 105-6, 112 Stat. 3666 (1998) (waiving grounds for removal of, or denial of admission to, named alien notwithstanding any order terminating his status as lawfully admitted permanent resident); Priv. L. No. 105-10, 112 Stat. 3670 (1998) (directing Attorney General to naturalize named disabled applicant for citizenship without administering required oath).

[12] *See, e.g.*, Priv. L. No. 96-29, 93 Stat. 1400 (1979) (providing for jurisdiction in U.S. Dist. Ct. for E.D. Cal. "notwithstanding the time limitation in [28 U.S.C. § 2401(b)] or any other provision of law" for claim of specific individual filed within six months of enactment and requiring that any such claim "shall be considered to have been filed in a timely manner"); Priv. L. No. 98-9, 98 Stat. 3417 (1984) (conferring jurisdiction on U.S. Dist. Ct. for D. Mass. over review of decision of board regarding discharge of railroad employee and declaring that any previous decision of district court shall not be a bar to this review nor shall be considered in rendering judgment); Priv. L. No. 99-18, 100 Stat. 4320 (1986) (providing for extension of time for named individual to present claim to federal agency and for jurisdiction in U.S. Dist. Ct. for N.D. Ohio to hear appeal on his claim); Priv. L. No. 100-32, 102 Stat. 4857 (1988) (providing for jurisdiction in U.S. Court of Claims for named individual's claims notwithstanding limitations period set out in statute).

[13] *See, e.g.*, Act of Apr. 20, 1810, ch. 24, 6 Stat. 89 (directing U.S. Marshal to discharge named individual from imprisonment on execution of judgment on behalf of United States, unless any

of which affect the application of judicial power in particular cases under Article III. Hence, any argument that "legislation may invade the judicial province when it lacks a general character," Br. of Amici Federal Courts Scholars at 19, is negated by the extensive practice of legislating on individual rights and claims throughout the Nation's history. While the Constitution assuredly has provisions regarding particularity in legislation, such as those prohibiting bills of attainder, U.S. Const. art. I, § 9, cl. 3, or mandating equal protection of the laws, U.S. Const. amend. V, those provisions are not at issue here.[14]

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person entitled to part of judgment against individual objects and pays cost of further imprisonment); Act of Mar. 3, 1813, ch. 62, 6 Stat. 119 (discharging three named individuals from imprisonment on judgment against them in United States' favor, if they assign and convey property to be held to satisfy judgments against them); Act of Feb. 22, 1816, ch. 19, 6 Stat. 158 (requiring discharge of named individual from imprisonment imposed on judgment for debt to United States); Act of Feb. 21, 1823, ch. 13, 6 Stat. 280 (authorizing discharge of named person from imprisonment for judgment in favor of United States and allowing new trial).

[14] To support their claim of a principle of legislative generality, Bank Markazi's amici rely on cases involving constitutional provisions other than Article III. Br. of Amici Federal Courts Scholars at 20-23 (citing *Nixon v. Administrator, General Services Admin.*, 433 U.S. 425 (1977) (Bill of Attainder, Equal Protection Clause, encroachment on Executive Branch); *United States v. Brown*, 381 U.S. 437 (1965) (Bill of Attainder); *INS v. Chadha*, 462 U.S. 919 (1983) (violation of Article I requirements for exercise of legislative power); *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 300 (1990) (Scalia, J., concurring) (Equal Protection Clause)). Consideration of these other provisions simply sheds no light on whether Article III imposes a duty of generality on exercises of legislative authority like that here, which is not alleged to violate those other provisions.

Further, the fact that legislation narrow in scope affects a claim in a pending case does not make it problematic under Article III. The power of Congress to legislate regarding specific circumstances and particular claims is not extinguished merely because the claim Congress is addressing has been filed at the time the law is enacted – otherwise the Court would have ruled the other way in *Wheeling Bridge* and *Robertson*, both of which involved statutes that adjusted the law applicable to specific pending cases.[15] As the District of Columbia Circuit observed in applying this Court's precedents to reject a challenge to a statute that changed the law applying to the claim underlying a pending legal action, "In view of *Plaut*,

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[15] Bank Markazi attempts to distinguish *Wheeling* and *Robertson* by arguing that section 8772, unlike the laws in those cases, has no "meaningful prospective effects." Petitioner's Br. at 35-39. Yet, this Court's decision in *Plaut* forecloses that argument. The statute in *Plaut*, which became law on December 18, 1991, established a limitations period applicable to private securities fraud suits that had been filed prior to June 19, 1991. Accordingly, the statute, by its very terms, had no "meaningful prospective effect" as it only applied to lawsuits that had been filed prior to the statute becoming law. Nevertheless, this Court did not express any concern with that statute's application to pending cases, noting that "[w]hen a new law makes clear it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly." *Plaut*, 514 U.S. at 226; *see also id.* at 238-39 (noting that the fact that "the class of actions identified by [the challenged statute] could have been more expansive and the provision could have been written to have prospective as well as retroactive effect" was irrelevant to whether it infringed on the judicial power). Rather, the Court found problematic the statute's application only to cases that had already reached final judgment, as opposed to pending cases, because it "command[ed] the federal courts to reopen" those cases. *Id.* at 219.

Miller v. French[, 530 U.S. 327 (2000)] and *Wheeling Bridge*, we see no reason why the specificity should suddenly become fatal merely because there happened to be a pending lawsuit." *Nat'l Coalition to Save Our Mall v. Norton*, 269 F.3d 1092, 1097 (D.C. Cir. 2001). There is no support, in either the text of the Constitution, the history of legislative practice under the Constitution, or this Court's precedents, for imposing a principle of legislative generality under Article III invalidating legislation because it affects a single case.

Both Bank Markazi and the Amici Federal Courts Scholars also highlight the fact that section 8772 references the assets it covers by expressly citing the caption and case number of this case, in which those assets are at issue. Petitioner's Br. at 25; Br. of Amici Federal Courts Scholars at 17 However, the statute in *Robertson* also explicitly referenced the pending cases affected by caption and number, *see* Pub. L. No. 101-121, § 318(b)(6)(A), 103 Stat. 701, 747, yet the Court was untroubled by the reference. *Robertson*, 503 U.S. at 440. Bank Markazi points out that the Court noted in *Robertson* that the reference to specific cases "served only to identify the five 'statutory requirements that are the basis for' those cases." Petitioner's Br. at 38 (quoting *Robertson*, 503 U.S. at 440). But just so here: the reference in section 8772(b) to a specific pending action serves to identify with particularity the assets covered by the statute – the assets that are the "basis for" this case – and, as in *Robertson*, raises no Article III concerns.

III. THAT LEGISLATION MAY EFFECTIVELY DETERMINE THE OUTCOME IN A PENDING CASE DOES NOT RENDER IT UNCONSTITUTIONAL.

As explained above, section 8772 does not direct courts how to rule in a pending case, but rather changes the law to be applied by the courts to the claims in this case. Bank Markazi argues that section 8772 violates Article III by "effectively dictat[ing] the outcome of this case," because the findings required by section 8772 before ordering attachment of the assets are minor and "foregone conclusions." Petitioner's Br. at 45-47. This argument is meritless.

First, Bank Markazi's argument is nothing less than a claim that because the application of section 8772 is clear, it is constitutionally objectionable. Such reasoning is misguided. Indeed, the hallmark of effective legislation is clarity, and the fact that courts may easily apply a law does not make it constitutionally suspect. The important point is that, no matter how clear its terms, application of section 8772 remains the responsibility of the Judiciary, as that section requires the courts' independent exercise of judicial power. That the two findings required by section 8772 as a condition for attaching the assets at issue may be straightforward does not diminish the role the courts must play in determining whether to order any attachment or execution thereunder. Bank Markazi's argument that the required judicial findings are "foregone conclusions," Petitioner's Br. at 47, as "Congress . knew full well what impact § 8772 would have on the outcome of this case," *id.* at 48, is beside the point. Merely because the facts as developed in this case may make the findings in section 8772(a)(2) easier to anticipate does not

undermine Congress' power to enact legislation specifically governing the attachment of these assets. As the court below noted, "it would be unusual for there to be more than one likely outcome when Congress changes the law for a pending case with a developed factual record." *Peterson v. Islamic Republic of Iran*, 758 F.3d 185, 192 (2d Cir. 2014).

Bank Markazi's argument that section 8772 is unconstitutional because it "effectively" dictates the outcome in a pending case also fails because it misstates the applicable test under *Klein*. Under that case, a law is unconstitutional if its provisions, by their own terms, direct the judiciary to rule a particular way in a specific case. Neither *Klein* nor any subsequent decision from this Court has held that a law is unconstitutional if it *effectively* requires a particular outcome in a pending case.

The Court's decisions in *Wheeling Bridge* and *Robertson* both refute Bank Markazi's attempt to stretch *Klein*'s holding. In *Wheeling Bridge*, the Court upheld a law declaring a bridge that had been found unlawful by the Court to be a lawful "post-road," making it no longer an obstruction to navigation legally subject to removal. 59 U.S. at 429-30. By declaring the bridge a lawful post-road, the law effectively overturned this Court's injunction and resolved the pending dispute over removal of the bridge. Similarly, in *Robertson*, by declaring that compliance with the new law's timber harvesting provisions and management scheme constituted compliance with the various applicable environmental statutes, the law Congress enacted effectively dictated the outcome in those cases – removal of the injunction and rejection of those claims. The Court upheld the laws in both cases even though they "effectively"

dictated the outcome of specific pending cases. Hence, the Court's decisions in *Wheeling Bridge* and *Robertson* foreclose Bank Markazi's argument that section 8772 violates Article III because it effectively dictates the outcome of this case.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below and sustain the constitutionality of section 8772.

Respectfully submitted,

PATRICIA MACK BRYAN
Counsel of Record
Senate Legal Counsel
MORGAN J. FRANKEL
Deputy Senate Legal Counsel
GRANT R. VINIK
THOMAS E. CABALLERO
Assistant Senate Legal Counsel
OFFICE OF SENATE LEGAL COUNSEL
642 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-4435
pat_bryan@legal.senate.gov

Counsel for United States Senate

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